HARCHARAN SINGH & ANOR *a*

v.

PP

COURT OF APPEAL, PUTRAJAYA *b*
MOKHTAR SIDIN JCA
MOHD GHAZALI YUSOFF JCA
AUGUSTINE PAUL JCA
[CRIMINAL APPEAL NO: B-05-81-2000]
26 OCTOBER 2004 *c*

CRIMINAL LAW: *Penal Code - Section 302 - Murder - Appeal against conviction and sentence - Conviction based on evidence of witness - Whether witness was an active accessory after the fact - Whether evidence required corroboration - Whether conviction and sentence set aside* *d*

EVIDENCE: *Witness - Corroboration - Whether witness was an active accessory after the fact - Whether evidence required corroboration - Whether conviction for murder rendered unsafe*

Both the accused were sentenced to death for the murder of one Shaikh Abdul Rub Samdani Siddiqi ('the deceased') under s. 302 of the Penal Code. The conviction was based on the evidence of one Gurmit Singh ('PW9') who was a witness to the final moments of the attack on the deceased. On appeal to this court, the issue was whether the conviction on the evidence of PW9 was proper. *e*

f

Held (allowing the appeal; quashing the conviction and sentence)
Per Augustine Paul JCA delivering the judgment of the court:

[1] The issue was whether the role played by PW9 required his evidence to be corroborated. He helped to loosen the rope around the deceased's neck. He helped to carry the body of the deceased to the boot of the car. When the car was driven off he sat as a passenger in the front seat. When the car later stopped PW9 and the second accused carried the deceased's body and dumped it. After that he did not mention what he knew to anyone. It was clear that the role he played was not passive. He was an active accessory after the fact. Where a witness plays such an active role his evidence is no better than that of an accomplice. The need to treat PW9's evidence with caution was made stronger by the fact that he was not charged as he had agreed to become a witness for the prosecution. Further, the evidence found to corroborate the evidence of PW9 by the learned *g* *h* *i*

judge did not qualify to be described as corroborative evidence in law. The only evidence to connect the two accused to the crime was that of PW9. As his evidence required corroboration of which there was none, there was no evidence on which the defence could have been called. (pp 20 c-f & 22 f-g)

*[**Bahasa Malaysia** Translation Of Headnotes*

Kedua-dua tertuduh telah dihukum mati di bawah s. 302 Kanun Keseksaan kerana membunuh seorang Shaikh Abdul Rub Samdani Siddiqi ('simati'). Sabitan adalah berdasarkan kepada keterangan seorang Gurmit Singh ('PW9') yang menyaksikan hingga ke saat akhir serangan yang dilakukan ke atas simati. Pada rayuan di sini, isu yang timbul adalah sama ada sabitan berdasarkan keterangan PW9 tersebut teratur.

Diputuskan (membenar rayuan; membatalkan sabitan dan hukuman)
Oleh Augustine Paul HMR menyampaikan penghakiman mahkamah:

[1] Isunya adalah sama ada peranan yang dimainkan oleh PW9 menyebabkan keterangannya itu harus disokong. Beliau membantu meleraikan tali yang terikat pada leher simati. Beliau membantu membawa badan simati ke but kereta. Apabila kereta bergerak beliau duduk di tempat duduk hadapan sebagai penumpang. Apabila kereta kemudiannya berhenti, PW9 dan tertuduh kedua membawa turun mayat dan menghumbannya. Selepas itu, beliau tidak memberitahu sesiapa tentang apa yang diketahuinya. Adalah jelas bahawa peranan yang dimainkannya bukanlah peranan pasif. Beliau adalah seorang peserta selepas fakta. Apabila seseorang saksi memainkan peranan yang sebegitu aktif, keterangannya samalah seperti keterangan seorang pensubahat. Keperluan untuk melayani keterangan PW9 secara berhati-hati diperkuat oleh fakta bahawa beliau tidak didakwa kerana bersetuju untuk menjadi saksi pendakwa. Selain itu, keterangan yang dikatakan oleh yang arif hakim sebagai keterangan yang menyokong keterangan PW9 tidak layak dianggap sebagai keterangan sokongan di sisi undang-undang. Satu-satunya bukti yang menghubungkan kedua-dua tertuduh kepada jenayah adalah bukti PW9. Oleh kerana keterangannya memerlukan sokongan, yang mana ianya tidak wujud, maka tiada alasan untuk memanggil tertuduh untuk membela diri.]

Case(s) referred to:
Alimuddin v. R 23 C 361 ***(refd)***
Amar v. R AIR [1931] L 406 ***(refd)***
Bihari v. State AIR [1957] Or 260 ***(refd)***
Davies v. Director of Public Prosecutions [1954] 1 All ER 507 ***(refd)***
Indar v. R AIR [1931] L 408 ***(foll)***
Kuan Ted Fatt v. PP [1985] 1 CLJ 150; [1985] CLJ (Rep) 174 FC ***(refd)***
Namasiyiam & Ors v. PP [1987] 1 CLJ 540; [1987] CLJ (Rep) 241 SC ***(refd)***
R v. Baskerville [1916] 2 KB 658 ***(refd)***
R v. Chando 24 WR Cr 55 ***(refd)***
Re Soo Leat [1956] MLJ 54 ***(refd)***
Sim Ah Song v. R [1951] MLJ 150 ***(refd)***

Legislation referred to:
Criminal Law Act 1967 [Eng], s. 1

Other source(s) referred to:
Sarkar on Evidence, 14th edn, vol 2, pp 1912-1913
Sarkar on Evidence, 15th edn, vol 2, p 2105

For the appellants/accused - Karpal Singh; M/s Karpal Singh & Co
For the respondent - Meor Hashim Abdul Hamid DPP

[Appeal from High Court, Shah Alam; Criminal Trial No: 45-5-1997]

Reported by Usha Thiagarajah

JUDGMENT

Augustine Paul JCA:
The charge preferred against the accused persons in this case is as follows:

> Bahawa kamu bersama-sama pada 1hb Mac 1996 jam lebih kurang 10.30 malam di rumah beralamat 306, Desa Aman Bt. 11 Sg. Buloh dalam daerah Gombak, dalam Negeri Selangor Darul Ehsan, dengan niat bersama kedua-dua kamu telah melakukan pembunuhan ke atas Shaikh Abdul Rub Samdani Siddiqi (Passport No. G 849203). Oleh itu kamu telah melakukan satu kesalahan yang boleh dihukum di bawah s. 302 Kanun Keseksaan dibaca bersama dengan seksyen 34 Kanun yang sama.

Both the accused persons claimed trial to the charge. Briefly stated the facts of the case are that on 15 March 1996 Ulang a/l Sipang (PW1) came across a big parcel when he was walking to his Kampong at Batu 16, Batu Caves, Gombak. He informed Corporal Ramli bin Tawil (PW2) about it. They found a dead body ("the deceased") in the parcel. Inspector Mohamad Maizan (PW6) was then informed. Upon further investigation a handphone was found at the scene. It was found to be registered in the name of one Jasbir Kaur (PW8)

for the use of her business partner Shaikh Abdul Rub, a Pakistani national who was later identified as the deceased. The police took possession of PW8's car. It was examined by the police Polilight expert. Samples of earth found on the seats and rubber mats were taken for Polilight examination. Two strands of hair were also found on one of the rubber mats in the boot of the car. Later the exhibits were sent to the Chemistry Department for analysis together with a sample of hair taken from the deceased. In dealing with the events that led to the death of the deceased we can do no better than reproduce the able summary of the facts as found by the learned trial judge in his grounds of judgment. It reads as follows:

> SP8 Jasbir Kaur a/p Pritam Singh is the wife of the 1st Accused. In 1996, she was a business woman. As stated above, the deceased was her business partner. She has been managing a bed and breakfast villa and selling cloth and Punjabi costumes since 1994. Previously, she was working for the deceased who was also known to her as Khan whose wife was originally with him in Malaysia but has since returned to Pakistan. Jasbir Kaur was invited by the deceased to become his business partner. This business partnership very soon developed to an extent and dimension beyond the frontiers of purely business partnership.
>
> After the deceased had been missing for 3 to 4 days, Jasbir Kaur made Dang Wangi police report No 4759/96. She was subsequently informed by the police of the deceased's death. The last occasion Jasbir Kaur saw the deceased was at noon on 1 March 1996 at Georgetown Pharmacy, Jalan Tuanku Abdul Rahman, where she bought some medicine. In 1996, Jasbir Kaur was staying near Jalan Tuanku Abdul Rahman. On that date, the deceased had telephoned Jasbir Kaur to inform her that he was going to Singapore and that he was giving his house key to his servant.
>
> On 2 March 1996, at the invitation of her mother-in-law, Jasbir Kaur together with the 1st Accused and 2 brothers-in-law went to Taiping, to attend the birthday party of a grandchild of her mother-in-law, and returned to Selayang on 3 March 1996.
>
> On 1 March 1996, Jasbir Kaur's husband ie, the 1st Accused took her car to work. After 6.00 p.m. when she left her house, she did not see her car there; even until 10.00 p.m., her car was still not there. She knew the 1st Accused was then using her car. Jasbir Kaur said the deceased knew the 1st Accused and that the 1st Accused and the deceased had no arguments. Jasbir Kaur had given the deceased her handphone for the deceased to use. Whenever the handphone was turned on, Jasbir Kaur's name would appear on the screen thereof.

Jasbir Kaur remembered the visits by some police officers such as DSP Gan and Insp. Mohamed to her house. At first she did not know of the reason for these visits, but was later told that the police wanted to take her car for inspection. For the remote control, ignition key and car which she handed to the police, she was given a search list which she refused to sign.

Initially, Jasbir Kaur testified that she had no misunderstanding with the deceased who also never used force on her and that apart from the business partnership, she had nothing to do with the deceased who also had no quarrel with her family. Jasbir Kaur described the deceased as a person of good personality, although the deceased was sometimes drunk and had engaged himself in senseless talk, and occasionally was hot tempered. However, later in her evidence, she admitted that the deceased had assaulted her and pushed her aside when she opened a door. She knew the deceased had an intense liking for women, but she did not interfere. Between 7.00 p.m. and 11.00 p.m. on 1 March 1996, she was in her mother's house at No. 306, Desa Aman, which she and the 1st Accused frequently visited.

Under cross-examination, Jasbir Kaur admitted that the deceased had assaulted her 3 to 4 times in order to have sex with her. The deceased had brought women to Jasbir Kaur's place of business, to view blue films or pornography and to have sex. The deceased had forced her to have sex with him. Besides, the deceased made numerous attempts to have sex with her, in December 1995, January and February 1996. She added that in December 1995, the deceased had made several attempts to molest her at the lodging house, Villa Exclusive, where the deceased had been a lodger. In the fourth attempt, the deceased pulled her hair, brought her to her room and assaulted her. The deceased broke a glass bottle and threatened to kill her. He assaulted her by pushing her against the wall, while she pulled his hair, assaulted him and then escaped. Jasbir Kaur told her husband, the 1st Accused, her cousin, the 2nd Accused that the deceased did not succeed in having sex with her, but her head and body were swollen. Be that as it may, she did not make a police report on the above episodes because she was ashamed, being a married woman. The 1st Accused was furious and told his wife Jasbir Kaur to cease the business partnership with the deceased. After the 4th attempt by the deceased, Jasbir Kaur stopped working at the lodging house for a while but continued subsequently. Jasbir Kaur then described the deceased as a fierce person who had assaulted her and her workers.

SP9 (Gurmit Singh a/l Sarup Singh) was a police constable in Sitiawan. In March 1996, he stayed at No 1371, Batu 11, Sg Buloh. He is married to Nachatra Kor a/p S Pritam Singh. He knew the deceased who always visited Jasbir Kaur who is Gurmit Singh's sister-in-law, i.e. the wife of the 1st Accused who is Gurmit Singh's brother.

On 1 March 1996, Gurmit Singh went to house No 306, Desa Aman, Sg Buloh. At about 9.30 p.m., he was sitting outside the house when Jasber Singh, the 2nd Accused, was also there. Subsequently, the 1st Accused and the deceased were walking towards the house. On arrival, the deceased went straight into the house, followed by the 1st Accused. They were both engaged in altercations and accusations. The 2nd Accused then entered the house. The two Accused and the deceased quarrelled for about half an hour. Gurmit Singh then heard a loud bang, apparently caused by a falling object to the floor. On entering the house subsequently, Gurmit Singh saw the deceased had already collapsed on the floor, face downwards or prostrate. At that time, the 1st Accused, holding a stick, swore at the deceased in the following Punjabi words:

Tu Ney Mere Zindagi Bardad Karte.

Tu Ney Mere Ghar Barbad Kardid Ta.

Tu Ney Meray Aufar Nu Makiah.

These Punjabi words were translated by the certified Punjabi Interpreter in open Court as:

You have destroyed my life.

You have destroyed my family.

You have hurt my wife.

The 1st Accused then climbed on top of the deceased's body, cursing and swearing at the deceased. The 2nd Accused ran to a room in the house, then returned with a rope to tie the deceased's neck, with the 1st Accused pulling one end of the rope and 2nd Accused the other end. Within 5 to 6 seconds, the 1st Accused requested Gurmit Singh to hold and pull the rope. At this stage, it is necessary to note that there was absolutely no evidence whatsoever that Gurmit Singh had ever participated in the 1st and 2nd Accuseds' act of pulling the rope around the deceased's neck. Gurmit Singh noticed that the deceased's neck was red and that the deceased was already dead. Gurmit Singh and the 2nd Accused then loosened the rope on the deceased's neck. The 2nd Accused then took a bed sheet from a room, walked past Gurmit Singh and wrapped the deceased's body with the bed sheet. Meanwhile, the 1st Accused reversed Jasbir Kaur's car in order to carry the deceased's body into the boot thereof. The 1st Accused opened the boot and held it, lest it might close back, while the 2nd Accused and Gurmit Singh carried the deceased's body into the boot, after which the 1st Accused drove the car, with Gurmit Singh as the passenger in the front seat while the 2nd Accused took a back seat. They left Sg Buloh for Kepong, and stopped at Jinjang Petronas Station where the 1st Accused refilled RM10.00 of petrol, since the car was running out of petrol. They proceeded towards Jalan Genting Lama, which was dark. After travelling for

about 40 minutes, the 1st Accused stopped the car and opened the boot. Gurmit Singh and the 2nd Accused carried the deceased's body and dumped it, but Gurmit Singh was not too sure of the place. Thereafter they returned home.

The deceased was already motionless when Gurmit Singh entered the house subsequently where he saw the 1st and 2nd Accused in the house. Gurmit Singh testified that 3 days before the incident, the 1st Accused had personally hatched a plan to assault or cause injury to the deceased, because the 1st Accused suspected SP8 Jasbir Kaur, the 1st Accused's wife, was having a clandestine extra-marital relationship with the deceased. Pursuant to the plan, two pieces of stick, one of which was longer than the other, were used by the 1st and 2nd Accused respectively to beat the deceased, in addition to the use of the rope tied around the deceased's neck and pulled by the 1st Accused and the 2nd Accused at both ends of the rope respectively. Gurmit Singh found the deceased lying prostrate, spotted some blood on the deceased's face and rear right ear.

SP9 admitted under cross-examination that he had been arrested and detained by the police for 15 days. He agreed to be a prosecution witness and he was not charged in Court. As will be seen later, DSP Gan who took a statement from Gurmit Singh, testified that no agreement or promise was made to Gurmit Singh for co-operating with the police. Gurmit Singh had known the deceased for more than 2 years before the incident, but was not on talking terms with him as they had quarrelled before, over the deceased's clandestine extra-marital relationship with Gurmit Singh's two sisters-in-law, *viz* Hasbinder Kaur and SP8 Jasbir Kaur with whom the deceased had been intensely intimate. Further, the deceased also frequented the shop of SP9's wife at Semua House, Jalan Masjid, Kuala Lumpur. These state of affairs had caused and enhanced Gurmit Singh's mistrust and distrust in the deceased. The deceased had indeed seduced all these women. Prior to this ill-fated incident, Gurmit Singh has had an altercation with the deceased in Jasbir Kaur's house in Selayang.

It is to be observed that so far there has been no attempt by the defence to impeach Gurmit Singh's credit and there was therefore no question of impeaching the credit of SP9 at this stage. Gurmit Singh has undergone incisive cross-examination by the defence and his evidence in my considered view remains unscathed so far. His evidence is clear, concise and consistent and there is nothing in his demeanour or testimony which can lead me to conclude otherwise. He has given his evidence with all fairness and truthfulness. I therefore accept him as a credible and reliable witness whose evidence must be considered and accepted as an integral, essential and cogent part of the case for the prosecution after a maximum evaluation thereof.

Dr Shahrom bin Abdul Wahid (PW10) conducted the post-mortem examination on the deceased. It was his finding that the cause of death was ligature strangulation which was not accidental. He said that the injuries could have been caused by more than one person. The defence made an attempt to impeach the credit of PW9. The learned trial judge accepted the explanation given by PW9 and held that his credit has been re-established.

It was submitted by the defence at the close of the case for the prosecution that PW9 is an accomplice. In dealing with this submission the learned trial judge said in his grounds of judgment:

> On the defence submission that Gurmit Singh is an accomplice and so is not a credible witness, I hold that SP9 has not participated in the commission of the offence stated in the charge. There is not an iota evidence that SP9 was a participes crimines, ie, a participant in the commission of the offence in question. When SP9 subsequently entered the house, the deceased's body was sprawling prostrate on the floor and was motionless. SP9 cannot be treated as an accomplice unless he has had a conscious hand in the commission of the murder of the deceased or he makes admission of facts showing that he has participated in the commission of the murder of the deceased herein. Gurmit Singh's participation, if at all, was clearly after the deceased was already dead. He did not participate in causing the death of the deceased. In the instant case, I therefore hold that SP9's evidence shall be treated as that of an ordinary evidence and not the evidence of an accomplice and so the question of corroboration does not arise at all.

The learned trial judge then called for the defence of both the accused persons. At the conclusion of the defence case he convicted both of them and sentenced them to death. This appeal is by both the accused persons against their conviction and sentence.

Before us it was strenuously argued by learned counsel that PW9 is an accomplice. There is no evidence to suggest that PW9 had ever participated in the first and second accuseds' act of pulling the rope around the deceased's neck. However, he was a witness to the final moments of their attack on the deceased and he assisted them in disposing off the body and did not inform anyone of whatever he had seen and the assistance that he had rendered. He is therefore an accessory after the fact. The question that requires to be determined is whether such a witness is an accomplice. In *Davies v. Director of Public Prosecutions* [1954] 1 All ER 507 the House of Lords held that persons who are particeps criminis in respect of the actual crime charged, whether as principals or accessories before or after the fact in felonies or persons committing, procuring or aiding and abetting in the case of misdemeanours are accomplices. In England s. 1 of the Criminal Law Act 1967

has abolished the distinction between felonies and misdemeanours. There is no such distinction in this country. However, it has been accepted that an accomplice is a person who is particeps criminis in respect of the actual crime charged (see *Re Soo Leat* [1956] MLJ 54; *Kuan Ted Fatt v. PP* [1985] 1 CLJ 150; [1985] CLJ (Rep) 174, *Namasiyiam & Ors v. PP* [1987] 1 CLJ 540; [1987] CLJ (Rep) 241). There is some controversy as to whether an accessory after the fact is an accomplice in the strict sense as he is not concerned in the original offence for which the accused has been charged. As *Sarkar on Evidence*, 14th edn, vol 2 says at pp. 1912-1913:

> In the penal laws of this country ordinarily two classes have been recognised: Persons who are principals (ie, directly or indirectly concerned in the offence) and abettors or instigators (ie, privy to the offence). The term 'accomplice' obviously includes principals in the first and second degrees as also abettors. An accessory after the fact is one who knowing a felony to have been committed receives, relieves, comforts, assists, harbours or maintains a felon. In a case it was doubted whether an accessory after the fact is an accomplice (*R v. Chutterdharee*, 5 WR Cr 59: see also *Nga Pauk v. R*, A [1937] R 513) but the Judicial Committee has held that he is (*Mahilikilili v. R*, A [1943] PC 4; 44 Cr LJ 1; *Mahadeo v. R*, A [1936] PC 242: 40 CWN 1164; see *Ismail v. R*, A [1947] L 220). An accessory after the fact being not concerned in the original offence for which the accused is tried, may not in the strict sense come within 'accomplice', but even in such cases there are exceptions, eg, the possessor of stolen property soon after theft may be presumed to be the thief (v. ill (a) to s. 114) and he is an accomplice in the case against the thief. All accessories after the fact are not of the same degree of criminality, as so much depends on the particular facts of each case. In many cases the question whether an accessory after the fact is or is not an accomplice in law may assume an academic form, the principal point to which consideration is applied being whether corroboration of his evidence is required. Whether an accessory after the fact does or does not come technically within the category of 'accomplice', he is on the same footing as an accomplice and his evidence is no better. The presumption of untrustworthiness equally attaches to his evidence and on the same principle as that of an accomplice, the sounder rule would be to require corroboration (see *Alimuddin v. R*, 23 C 361 post; *R v. Kalu*, A [1937] O 259; *Shyan Kumar v. R*, A [1941] 0130; *Brijpal v. R*, A [1936] O 413; *Turab v. R*, A 1935 0 1; *Sundor Lal v. R*, A [1934] O 315; *Nawab v. R*, A [1923] L 391; *Bahawala v. R*, A [1925] L 432; *Hayatu v. R*, A [1929] L 540; *Ismail v. R*, A [1947] L 220; *Ashutosh v. S*, A [1959] Or 159 and cases post), except when it can be dispensed with in the special circumstances of a case. In such cases the real question is the degree of credit to be attached to the evidence of these witnesses who as accessories are concerned with the accused in some other offence arising out of the original offence.

Strictly speaking an accessory after the fact cannot be an accomplice as he is not concerned in the commission of the original offence. In *Kuan Ted Fatt v. PP* [1985] 1 CLJ 150; [1985] CLJ (Rep) 174 the Federal Court did not treat a witness who was present at the time of the commission of the offence as an accomplice as he had no prior knowledge that the offender intended to commit the offence charged. However, it can be safely stated that the question of whether an accessory after the fact is an accomplice is academic as his evidence must be considered on the same principles as that of an accomplice. Where he has played an active role his evidence must be corroborated. On the other hand if his role has been passive his evidence may be accepted with the usual corroboration warning.

What remains to be considered is whether the role played by PW9 requires his evidence to be corroborated. He helped to loosen the rope around the deceased's neck. He helped to carry the body of the deceased to the boot of the car. When the car was driven off he sat as a passenger in the front seat. When the car later stopped PW9 and the second accused carried the deceased's body and dumped it. After that he did not mention what he knew to anyone. It is clear that the role played by PW9 is not passive. He was an active accessory after the fact. Where a witness plays such an active role his evidence is no better than that of an accomplice (see *Alimuddin v. R* 23 C 361). A similar view has been expressed in the case of a witness who admits that he is cognisant of the crime to which he testifies and took no steps to prevent or disclose it (see *R v. Chando* 24 WR Cr 55; *Bihari v. State* AIR [1957] Or 260). The need to treat PW9's evidence with caution is made stronger by the fact that he said that he was not charged as he had agreed to become a witness for the prosecution. In support we refer to cases such as *Amar v. R* AIR [1931] L 406 and *Indar v. R* AIR [1931] L 408 where it was held that the testimony of a person who has thrown to the wolves his erstwhile associates and friends in order to save his own skin must be received with great caution. In the circumstances it was our view that the evidence of PW9 requires to be corroborated.

The learned trial judge did consider the evidence in corroboration of the testimony of PW9 in his alternative finding of PW9 being an accomplice. As he said in his grounds of judgment:

> In the event that I have erred in my aforesaid finding that Gurmit Singh is not an accomplice, I shall now consider the finding in the alternative that he is an accomplice and treat him as such. It is trite law that this alternative finding that Gurmit Singh is an accomplice is permissible and there is nothing objectionable. In *Teja Singh & Anor v. PP* [1950] MLJ 71, at pp. 73-74, Spenser Wilkinson, J said:

> I can see nothing wrong in a Court finding, as a matter of law, that a witness is not an accomplice and then going on to indicate what its finding would be in case it should be held that this matter of law has been wrongly decided.

This principle was followed and applied in *Haji Ismail bin Mat Saat v. PP* [1955] 1 MLJ (CA); *Chua Sin Teng & Ors v. PP* [1963] MLJ 150 (HC); and *Lee Poh Chet & Ors v. PP (No 2)* 1 MLJ 187 (CA).

> Therefore, even by treating Gurmit Singh as an accomplice, it is my specific finding that Gurmit Singh's evidence that the deceased's death was jointly caused by 1st and 2nd Accused has been corroborated by the evidence of SP10 Dr Shahrom bin Abdul Wahid, in particular the extent of the injuries established in the post-mortem report and also the cause of these injuries, culminating in the deceased's death. SP7 the Polilight expert's evidence has also corroborated the evidence of Gurmit Singh to the extent that the 1st and 2nd Accused had jointly transported and carted the deceased's body which they threw into a ravine. The detailed analysis of the evidence given by SP6 Insp Mohamed and SP13 the chemist Mr Lim Kong Boon, as given above, have in my view cumulatively corroborated Gurmit Singh's evidence.

We are unable to comprehend how the extent of the injuries and the cause of death as stated in the post-mortem report can corroborate PW9's evidence that the deceased's death was jointly caused by the first and second accused. PW10 did say that the ligature mark on the neck of the deceased was consistent with the pattern of the red nylon ligature which was tied around the deceased's neck. He said in evidence that the ligature around the deceased's neck could have been caused by one or more persons. In cross-examination he said that the death of the deceased could have been caused by one person if the deceased had been rendered unconscious as a result of the beating of his head. This evidence does not in any way corroborate PW9's testimony that the deceased's death was jointly caused by the first and second accused. The learned trial judge also said that the evidence of the Polilight expert's evidence has also corroborated the evidence of PW9 to the extent that the first and second accused had jointly transported and carted the deceased's body which they threw into a ravine. It will be observed that the Polilight expert collected some earth and hair samples from the boot of the car of PW8. Lim Kong Boon (PW13) analysed the samples of hair taken from the car and the deceased and said that they could have come from the same source though he is unable to state the percentage of similarity. He ought to have stated the percentage of similarity found and the minimum that is required to support his conclusion which he did not. In the absence of such evidence his conclusion is not supported by reasons as required by s. 51 of the Evidence Act 1950. That deprives the testimony of PW13 of its evidential value on the

principles explained in *Sim Ah Song v. R* [1951] MLJ 150. In any event the similarity in the hair found in the car and that of the deceased means little. It only shows that the deceased was placed in the boot of the car as described by PW9. However, that does not connect the accused persons with the crime. As Lord Reading CJ said in *R v. Baskerville* [1916] 2 KB 658 at p. 667:

> We hold that evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. In other words, it must be evidence which implicates him, that is, which confirms in some material particular not only the evidence that the crime has been committed, but also that the prisoner committed it.

In commenting on the significance of the need for corroboration with regard to the identity of the accused *Sarkar on Evidence*, 15th edn, vol 2 says at p. 2105:

> It is an established rule of practice that an accomplice must be corroborated by independent evidence as to the identity of every person whom he impeaches. The accomplice may know every circumstances of the crime, and while relating all the other facts truly, may in order to save a friend, or gratify an animosity, name some person as one of the criminals who was innocent of the crime (*R v. Krishna Bhat*, 10 B 319; see also *R v. Malapa*, 11 BHC 196; *R v. Budhu Nanku*, 1 B 475).

Thus the similarity of the hair sample of the deceased with that of the sample found in the boot of the car does not amount to corroboration as it does not show that both the accused persons had committed the crime. We also fail to see how the evidence of PW6 and PW13 can cumulatively corroborate the evidence of PW9 as found by the learned trial judge. In the circumstances it is our view that evidence which has been found to be corroborative by the learned trial judge does not qualify to be described as such in law.

The only evidence in this case to connect the two accused persons to the crime is that of PW9. As we have found that his evidence requires to be corroborated and of which there was none there was no evidence on which the defence could have been called. In the upshot we allowed the appeal and quashed the conviction and sentence imposed on the accused persons.